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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200331-0095]

RIN 0648-BJ66

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder Fishery; Fishing Year 2020

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures for the 2020 summer flounder recreational fishery. The implementing regulations for this fishery require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of this action is to constrain recreational catch to the summer flounder recreational harvest limit and thereby, prevent overfishing on the summer flounder stock.

DATES: Comments must be received by *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0033, by either of the following methods:

Electronic submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

- Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0033,

- Click the “Comment Now!” icon, complete the required fields, and
- Enter or attach your comments.

- OR -

Mail: Submit written comments to Michael Pentony, Regional Administrator, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy

Analyst, (978) 281-9116.

SUPPLEMENTARY INFORMATION:

Background

Summer flounder is cooperatively managed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The Council and the Commission’s Summer Flounder Management Board (Board) meet jointly each year to recommend recreational management measures for summer flounder. NMFS must implement coastwide measures or approve conservation equivalent measures per 50 CFR 648.102(d) as soon as possible following

the Council and Commission's recommendation. This action proposes maintaining conservation equivalency for 2020, as jointly recommended by the Council and Board.

Recreational Management Measures Process

The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) established a Monitoring Committee for summer flounder consisting of representatives from the Commission, the Council, state marine fishery agencies from Massachusetts to North Carolina, and NMFS. The FMP's implementing regulations require the Monitoring Committee to review scientific and other relevant information annually. The objective of this review is to recommend management measures to the Council that will constrain landings within the recreational harvest limit (RHL) for the upcoming fishing year. The FMP limits the choices for the types of measures to minimum and/or maximum fish size, per angler possession limit, and fishing season.

The Council and the Board then consider the Monitoring Committee's recommendations and any public comment in making their recommendations. The Council forwards its recommendations to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the target specified for summer flounder in the FMP and all applicable laws and Executive Orders before ultimately implementing measures for Federal waters. Commission measures are final at the time they are adopted.

Summer Flounder Conservation Equivalency Process

Conservation equivalency, as established by Framework Adjustment 2 (66 FR 36208; July 11, 2001), allows each state to establish its own recreational management

measures (possession limits, size limits, and fishing seasons) to achieve its state management target partitioned by the Commission from the coastwide RHL, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures. Framework Adjustment 6 (71 FR 42315; July 26, 2006) allowed states to form regions for conservation equivalency in order to minimize differences in regulations for anglers fishing in adjacent waters.

The Council and Board annually recommend that either state- or region-specific recreational measures be developed (conservation equivalency) or that coastwide management measures be implemented to ensure that the RHL will not be exceeded. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of non-preferred coastwide measures that would apply if conservation equivalency is not approved for use in Federal waters.

When conservation equivalency is recommended, and following confirmation by the Commission that the proposed state or regional measures developed through its technical and policy review processes achieve conservation equivalency, NMFS may waive, for the duration of the fishing year, the permit condition found at 50 CFR 648.4(b), which requires Federal permit holders to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted summer flounder charter/party permit holders and individuals fishing for summer flounder in the exclusive economic zone (EEZ) are subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures. Conservation equivalency expires at the end of each fishing year (December 31).

In addition, the Council and the Board must recommend precautionary default measures when recommending conservation equivalency. The Commission would require adoption of the precautionary default measures by any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee, or that submits measures that are not conservationally equivalent to the coastwide measures.

The development of conservation equivalency measures happens at both the Commission and the individual state level. The selection of appropriate data and analytical techniques for technical review of potential state conservation equivalent measures and the process by which the Commission evaluates and recommends proposed conservation equivalent measures are wholly a function of the Commission and its individual member states. Individuals seeking information regarding the process to develop specific state or regional measures or the Commission process for technical evaluation of proposed measures should contact the marine fisheries agency in the state of interest, the Commission, or both.

Once the states and regions select their final 2020 summer flounder management measures through their respective development, analytical, and review processes and submit them to the Commission, the Commission will conduct further review and evaluation of the submitted proposals, ultimately notifying NMFS as to which proposals have been approved or disapproved. NMFS has no overarching authority in the development of state or Commission management measures but is an equal participant along with all the member states in the review process. NMFS neither approves nor implements individual states' measures, but retains the final authority either to approve or

to disapprove the use of conservation equivalency in place of the coastwide measures in Federal waters. NMFS will publish its determination on 2020 conservational equivalency as a final rule in the **Federal Register** following review of the Commission's determination and any other public comment on this proposed rule.

2020 Summer Flounder Recreational Management Measures

The 2020 summer flounder RHL is 7.69 million lb (3,488 mt), which is the same as the 2019 RHL. Based on preliminary Marine Recreational Information Program (MRIP) data through October 2019 (wave 5) summer flounder landings are projected to be 7.74 million lb (3,510 mt), which is 1 percent above the 2019 and 2020 RHL of 7.69 million lb (3,488 mt). At the time the Council and Board approved 2020 recreational measures, data were only available through wave 4 (August 2019), which resulted in projected harvest of 7.06 million lb (3,202 mt), 8 percent below the 2020 RHL. The Council and Board consider the uncertainty around the recreational harvest estimates by maintaining status quo measures if the coastwide percent standard error (PSE) around the recreational estimate encompasses the following year's RHL. This was the case using projections through wave 4, and, therefore, the Council and Board did not approve a liberalization in measures for 2020. The revised projections using data through wave 5 are also within the PSE; therefore, no -adjustments are needed.

Based on the Council's and the Board's recommendations, and as part of the conservation equivalency process, NMFS also proposes a suite of non-preferred coastwide measures identified by the Council and Board, which would be in effect should NMFS not approve conservation equivalency. These measures are expected to constrain the overall recreational landings to the 2020 recreational harvest limit, should

conservation equivalency be disapproved based on the Commission's recommendation letter. For 2020, non-preferred coastwide measures approved by the Council and Board are a 19-inch (48.3-cm) minimum fish size, a four-fish per person possession limit, and an open season from May 15-September 15. These measures are identical to the non-preferred 2019 coastwide measures. The coastwide measures become the default management measures in the subsequent fishing year, in this case 2021, until the joint process establishes either coastwide or conservation equivalency measures for the next year.

The 2020 precautionary default measures recommended by the Council and Board are identical to those in place for 2019: A 20.0-inch (50.8-cm) minimum fish size; a two-fish per person possession limit; and an open season of July 1-August 31, 2020. These measures may be assigned by the Commission if conservation equivalency is approved but a state or region does not submit a conservationally equivalent proposal.

Similar to 2016-2019, the 2020 management program adopted by the Commission divides the coastline into six management regions: 1) Massachusetts; 2) Rhode Island; 3) Connecticut-New York; 4) New Jersey; 5) Delaware-Virginia; and 6) North Carolina. Each state within a region must implement identical or equivalent measures (size limits, bag limit, and fishing season length), and the combination of those measures must be sufficient to constrain landings to the recreational harvest limit.

Through the Commission process, states may submit proposals for conservationally equivalent measures that would maintain status quo harvest levels relative to the preliminary 2019 recreational harvest. Proposals for conservationally equivalent state measures will be reviewed by the Board's Technical Committee in late

March, and the Board will consider final approval in early April 2020. Following the Board's consideration of final 2019 state measures, the Commission must submit a letter to NMFS stating whether the states have met the conservation objectives under Addendum XXXII to the Commission's Interstate FMP and that catch is expected to constrain catch to the 2020 recreational harvest limit. Once that letter is received, NMFS will be able to publish a final recreational management measures rule with a conservation equivalency determination for 2020.

Regulatory Corrections

Additionally, this proposed rule includes a revision to the regulations implementing the FMP to update text that is unnecessary, outdated, unclear, or otherwise could be improved. NMFS proposes these changes consistent with section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to a fishery management plan (FMP) are carried out in accordance with the FMP and the Magnuson-Stevens Act. The regulation at § 648.102(d)(2) describes conservationally equivalent measures that states or regions would develop for summer flounder. In a prior action promulgating regulations for Framework Adjustment 14 (84 FR 65699; November 29, 2019), we intended to replace "minimum fish sizes" in this regulation with "minimum and/or maximum fish sizes" to reflect Framework Adjustment 14's addition of maximum size limits as a management measure available for summer flounder recreational fisheries. This change was inadvertently left out of the rule. To correct this error this action proposes to replace "minimum fish sizes" with "minimum and/or maximum fish sizes."

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures. According to the commercial ownership database, 389 for-hire affiliate firms generated revenues from recreational fishing for various species during the 2016-2018 period. All of those business affiliates are categorized as small businesses. The SBA defines a small for-hire recreational fishing business as a firm with receipts of up to \$7.5 million. Estimating what proportion of the overall revenues for these for-hire firms came from fishing activities for an individual species is not possible. Nevertheless, given the popularity of summer flounder as a recreational species in the Mid-Atlantic and New England, generated revenues are likely very important for many of these firms at certain times of the year. The 3-year average (2016-2018) combined gross receipts (all for-hire fishing activity

combined) for these small entities was \$52,156,152, ranging from less than \$10,000 for 119 entities (lowest value \$124) to over \$1,000,000 for 8 entities (highest value \$2.9 million).

This proposed action would waive Federal measures in lieu of state measures designed to reach the 2020 harvest limit. The economic impacts of the proposed measures in this action will be affected in part by the specific set of measures implemented at the state level for summer flounder conservation equivalency. The impacts are likely to vary by state, but are expected to be very similar to measures that were in place in 2019. The summer flounder recreational measures under conservation equivalency are expected to neither reduce nor increase recreational satisfaction or for-hire revenues when compared to 2019. Demand for for-hire trips is expected to remain approximately the same as in 2019. Thus, market demand is expected to be similar in 2020, although this is likely to vary by state depending on each state's current measures and how they choose to modify them in 2020.

Because the 2020 measures are expected to be mostly identical to 2019, this rule will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 31, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.102, paragraph (d)(2) is revised to read as follows:

§ 648.102 Summer flounder specifications.

* * * * *

(d) * * *

(2) *Conservation equivalent measures.* Individual states, or regions formed voluntarily by adjacent states (*i.e.*, multi-state conservation equivalency regions), may implement different combinations of minimum and/or maximum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional

standard error of recreational landing estimates by mode or area for that state is less than 30 percent.

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3. In § 648.107, the introductory text to paragraph (a) is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2020 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

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